

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MOI, an individual,
Plaintiff,

v.

CHIHULY STUDIO, INC., a Washington
corporation; DALE CHIHULY,
individually and as a married person;
LESLIE CHIHULY, individually and as a
married person,

Defendants.

CHIHULY INC., a Washington
corporation; and DALE CHIHULY,
individually,

Counterclaim-
Plaintiffs,

v.

MICHAEL MOI, an individual,

Counterclaim-
Defendant

No. 2:17-cv-00853-RSL

CHIHULY DEFENDANTS' REPLY IN
SUPPORT OF RULE 41(a)(2) REQUEST
FOR ENTRY OF ORDER OF
VOLUNTARY DISMISSAL OF
COUNTERCLAIMS

**NOTE ON MOTION CALENDAR:
FRIDAY, AUGUST 16, 2019**

1 The Court should grant the Chihuly Defendants' Request for Entry of Order of Voluntary
2 Dismissal of Counterclaims (Dkt # 183) and dismiss Chihuly's counterclaims without prejudice.
3 Moi's "Partial Objection" (Dkt # 185)—which asserts without citation to authority or evidence
4 that Chihuly's conversion claim "should be dismissed 'with prejudice' because the statute of
5 limitations has elapsed"—is improper and meritless.

6 First, Moi's request for dismissal with prejudice is improper because Chihuly's Rule
7 41(a)(2) request is not an adjudication on the merits. "[A]n action may be dismissed at the
8 plaintiff's request only by court order, on terms that the court considers proper," and "[u]nless the
9 order states otherwise, a dismissal . . . is without prejudice." Fed. R. Civ. P. 41(a)(2). Such a
10 voluntary dismissal is not an adjudication on the merits. *See Maxwell v. Heatherington*, No.
11 3:14-CV-00384-AC, 2014 WL 4631223, at *3 (D. Or. Sept. 12, 2014) ("[B]ecause Maxwell has
12 exercised his right to voluntary dismissal, the court does not reach the merits of Maxwell's
13 claims."). Moreover, Moi never sought dismissal of Chihuly's conversion claim on the merits,
14 making his request for dismissal with prejudice improper and untimely.

15 Second, Moi's assertion that Chihuly's conversion claim is time-barred is mistaken.
16 Chihuly filed and served its claim on June 2, 2017, within four months of learning of Moi's
17 improper possession of the documents at issue. Dkt. # 3 ¶¶ 36-37. By filing and serving this
18 counterclaim, Chihuly tolled the statute of limitations. *See Nearing v. Golden State Foods*
19 *Corp.*, 114 Wn. 2d 817, 820, 792 P.2d 500, 502 (1990) ("[A]n action is tentatively commenced
20 by service of a summons or the filing of a complaint and the statute of limitations is tolled
21 pending filing of the summons and complaint within 90 days from the date of service."); RCW
22 4.16.170 ("For the purpose of tolling any statute of limitations an action shall be deemed
23 commenced when the complaint is filed or summons is served whichever occurs first.");
24 *Hammond v. Ortho-McNeil Pharm., Inc.*, No. C07-1876RAJ, 2015 WL 6550659, at *2–3 (W.D.
25 Wash. Oct. 28, 2015) (noting that "plaintiff's filing of the complaint . . . would have tolled the
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1 limitations period if she had served defendant within 90 days”). Chihuly’s conversion claim
2 was, therefore, timely when filed and remains so.

3 For the foregoing reasons, the Court should GRANT Chihuly’s Request for Entry of
4 Voluntary Dismissal of Counterclaims and dismiss the claims without prejudice.

5 DATED: August 16, 2019

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CERTIFICATE OF SERVICE

I certify that on August 16, 2019, I caused the foregoing to be served on the following attorney(s) of record by the method(s) indicated:

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I certify under penalty of perjury that the foregoing is true and correct.

DATED this 16th day of August, 2019.

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